1941. **File No:** O. Motor/41

Legal **DEPARTMENT**

A **BRANCH**

K

Subject:

Opinions under the Indian Motor vehicles Act, 1939

P 13 E

File No.

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O Motor /41

139-A

C O N T E N T S

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11/5

K.S.R.
11/5

Office of the R.T.A.

The old Motor Vehicles Rules having ceased to be in force, the orders passed under them granting the exemptions have ceased to operate. To continue the exemptions, fresh orders under the new rules (The Bombay Motor Vehicles Rules, 1940) will be necessary. Such orders can be passed under rules 22 (b) and 35(c) of these rules.

Sd/- P.N. Moos
13/2

Remembrancer of Legal Affairs.

U.R. to R.D., ~~1340~~ 1391 dated the 14th February, 1941.

Mr 11/4/

3 R-I. No 3211 7-4-41

Office of the R.L.A.

The question raised by the Secretary, H.D. for the consideration of the R.L.A. are:-

(1) Whether it is legally feasible to set up blocks on the Bombay-Agra Road in order that the mitor vehicles may reduce speed or stop at a particular point for examination, and if it cannot be done under the existing law, how the power to do so should be obtained.

(2) Whether the P.W.D. which makes blocks on the road for the purposes of repairs have any special authority.

(3) Whether the District Magistrate who has power to close a ghat for traffic by night cannot erect a barrier to enforce obedience to his orders.

2. Question No. 1. As pointed out by the R.L.A. in his opinion No 1356, dated the 13th February 1941 it would not be legal under the existing law to set up blocks on the Bombay-Agra Road in order to compel the motor xx to reduce speed or stop at a particular point for examination. (See also R.L.A's No. 8966 dated 8-9-1939 and para. 13 of R.L.A. 's No 3120 dated 20-3-1940). To achievor the object it would be necessary to amend the Motor Vehicles Act, 1939.

3. Question No. 2.- It does not appear that there is any provision of law empowering the P.W.D. to close or block any road, It is the duty of the P.W.D. to repair roads vesting in in Government. If therfore for the purpose of repairing any road, P.W.D. finds it necessary to block a portion of it temporarily, such action cannot be held to amount to a nuisance as it is taken for the purpose of repairing and improving the road.

4. Question No 3. It is true that by H.D. Notification No. 3680/39 and No 3680/39(a), dated the 11th september 1939 (Bombay Government Gazettee Part IV-A pages 957-964)the

Government of Bombay in exercise of the powers conferred by section 74 and section 71(2) of the Indian Motor Vehicles Act, 1939, have placed certain restrictions regarding the driving of motor vehicles on the Ghat roads specified therein. It is also true that the powers under both these sections have been delegated to the District Magistrates by R.D. Notification No. 3680-B/39 dated the 30th April, 1940 so that the District Magistrates can prohibit and restrict the driving of motor vehicles on the Ghat roads subject to exceptions and conditions stated therein. Contravention of the orders issued by the District Magistrate under Sections 71(2) and 74 is punishable under section 115 and section 124 of the Act. But as pointed out in para 2 above, it would not be legal for the District Magistrate to close the Ghat for traffic by erecting a barrier to enforce obedience to his orders under these sections. If he erects a barrier, Government would be liable in damages to those who may suffer any particular damage by such obstruction. (31 All. 444; 33 All. 287).

Sd/- P.N. Moos.
1824

Remembrancer of Legal Affairs.

U.R. to H.D. No. 3410, dated the 18th April 1941.

Mr/11/4

Officer or the R.I.A.

Any failure on the part of a lorry driver to comply with the signal of the police to stop would be punishable under section 113 read with section 87(1)(a) of the Motor Vehicles Act 1939. There is no provision in the Act empowering the police officers to place barriers on the roads or to adopt any other measures for enforcing compliance with their signals to lorry drivers to stop. The only remedy, therefore, is to institute prosecutions in such cases.

Sd/- P.N.Moos
19/4/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3520 dated the 22nd April 1941.

Mr /11/4

Office of the R.L.A.

The first question raised for consideration is as regards the extent to which a police officer empowered to stop a vehicle may go in order to enforce obedience to his order given under sub-rules(1) and (2) of rule 100 of the Burma Motor Vehicles Rules, 1940, read with section 87(1) of the Motor Vehicles Act 1939, directing the driver of a transport vehicle to stop it for the purpose of inspection. These provisions empower the police officer to call upon a driver of a transport vehicle in a public place to stop the vehicle and to keep it at rest for such time as is necessary to enable the police officer to make a reasonable examination. They do not empower the officer himself to stop the vehicle by any physical means The only remedy available in such cases is to prosecute the driver under section 113 of the Act (see R.L.A's opinion No ~~3259~~ 3570, dated 22nd April, 1941).

2. The second question is whether under rule 100(4), an Inspector of Motor Vehicles can order the driver to stop a moving vehicle in a public place for the purposes of inspection. Rule 100(4) provides that any inspector of Motor vehicles shall be entitled at any time to inspect a transport vehicle in a public place. The language is wide enough to suggest, prima facie, that the power of inspection given under it extends not only to transport vehicles at rest, but also to such vehicles in motion, the only condition prescribed being that the vehicle should be in a public place. And also, the power to inspect would imply as indispensable to its exercise also the power to order the driver to stops the vehicle for the purposes of inspection. But this interpretation is not free from difficulty. For upon

an examination of the different clauses of rule 100, it is apparent that while sub-rules(1) and (3) give to the police ~~off~~ officer the power to call upon the driver or a moving vehicle to stop, sub-rule (4) does not contain such provison. I am therefore of opinion that on the whole it would be unsafe to hold that rule 100(4) empowers an Inspector to order the ~~driver~~ driver to stop a moving vehicle.

2. The next question is ~~whether~~ whether the Rules can be so amended as to give him such power. It is true that an Inspector of Motor Vehicles is not a Police Officer and has no power under section 87(1) of the Act to direct the driver of a vehicle to stop(see R.L.A's opinion No 3340, dated 3rd April 1940). But this circumstance is irrelevant in the consideration of this question which must be determined solely with reference to the rule-making power given to the Provincial Government under the Act. Chapter IV of the Act relates to the control of transport vehicles. Sub-section (1) of section 68 contained in this Chapter empowers the Provincial Government to make rules for carrying into effect the provisions of the Chapter; and section 68(2)(x) stated that without prejudice to the generality of the foregoing power, rule may be made, inter alia, with respect to the inspecting of transport vehicles and their contents and of the permits relating to them. When the power of inspection is granted by statute, everying indispensable to its effective exercise can also be granted under the rule-making provision. Government can therefore make a rule requiring the driver of a transport vehicle to stop it for the purposes of inspection when required to do so by an Inspector. Such a rule would not be repugnant to but supplementary to section 87(1) of the Act.

Id.P.N.M. 14/6
Remembrancer of Legal Affairs.
No. H.D. No. 5455, dated the 19th June 1941.

Submitted.

Attention is invited to para 1 of R.L.A.'s opinion No. 5457, dated 10.6.1941 in which the R.L.A. had advised that the provisions in section 87(1) of the Motor Vehicles Act, 1939, and sub-rules (1) and (2) of rule 100 of the Bombay Motor Vehicles Rules, 1940, which authorised a police officer to call upon a driver of a transport vehicle in a public place to stop the vehicle and keep it at rest for examination, did not empower him to stop the vehicle by any physical means and that the only remedy available was to prosecute the driver under section 113 of the Act. With regard to this Secy. H.D. in his note at pp. 17-18 ante remarks that the general powers of the Police under section 57 of the Criminal Procedure Code are sufficient to justify the arrest of a man refusing to stop, and if he attempts to evade arrest the police may use all means necessary to effect it, except causing death. The R.L.A. is requested to advise whether the view expressed by Secy. H.D. is correct.

2 Sub-Section (1) of section 57 of the Criminal Procedure Code provides inter alia that when any person who in the presence of a police officer has committed

a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name andresidence which such officer has reason to believe to be ~~false~~ false, he may be arrested by such officer in order that his name or residence may be ascertained. In order to justify an ~~arrest~~ arrest under this section two conditions have got to ne satisfied: (1) the person must have committed a non-cognizable offence, and (2) he must have refused, on demand which is communicated to him, to disclose his name and ~~adress~~ address.

A driver who disobeys a police officer's order under rule 100 (4) of the Bombay Motor Vehicles Rules After amendment as proposed to stop a transport vehicle no doubt commits a non-congnizable offence; but without his having refused on demand as ~~xxxxxxxx~~ aforesaid to give his name and residence a police officer will not be justified in using " all means necessary to effect the arrest" or the driver under section 57, read with section 46(2).

Id/16/7/41

I agree. Reply may be as in paras 2 &3 of Mr. Deshmukh's note

Sd/-.
16/7
~~xxx~~ A.L.R.

As amended in Para.2

Sd/- 17-7

I d. P.N.M

18/7

Office of the R.L.A.

Sub-section (1) of section 57 of the Ctiminal Procedure Code provides inter alia that when any person who in the presence of a Police officer has committed a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name and residence which such officer has reason to believe to be ~~flase~~ false, he may bearrested by such officer in order that his name or residence may be ascertained. In order to justify an arrest under this section two conditions have to be satisfied: (1) the person must have committed a non-cognizable offence, and (2) he must have refused, on demand which is communicated to him, to disclose his name and address. A driver who disobeys a police officer's order under rule 100 of the Bombay Motor Vehicles Rules to stop a transport vehicle no ~~doubt~~ doubt commits a non-cognizable offence, but without his ~~having~~ having refused on demand as aforesaid to ~~give~~ give his ~~name~~ name and residence a police officer will not be justified in using "all means necessary to effect the arrest" of the driver under section 57 read with section 46(2).

Sd/- P.N.M.
19/7
Remembrancer of Legal Affairs.

U.R. to H.D., No. 6422, dated the 22nd July 1941

Mr/11/4

Submitted.

It appears that difficulty is experienced by the P.W.D. in recovering the cost of damages to P.W.D. roads caused by motor accidents from the owners or drivers of the vehicles. The question raised for the consideration of the N.L.A. is whether a rule can be framed under section 91 of the Motor Vehicles Act, 1939 (IV of 1939), providing for the means to recover the cost of damages to Govt. Property caused by Motor accidents.

2. Sub-section (1) of section 91 of the Motor Vehicles Act, 1939, empowers the Provl. Govt. to make rules for the purpose of carrying into effect the provisions of Chapter VI. This Chapter contains provisions re 'Control of Traffic'. Sections 71 and 72 provide for limits of speed and weight. Sections 73 to 75 provide for the weighing of vehicles, restriction of their use and the erection of traffic signs. The next two sections provide for the provision of parking places and the designation of certain roads as main roads. Sections 78 to 87 prescribe certain duties which a driver of a vehicle has to observe. Section 88 requires the owner of a motor vehicle to give certain information. Section 89 prescribes the driver's duty in case of accidents. Section 90 provides for inspection of a

vehicle involved in an accident. Clauses 4(a) to (j) of sub-section (2) of section 91 prescribe the various matters in respect of which rules can be made. Out of them, under clause (1) rules can be made only for the prevention of danger or injury to property. The other clauses do not provide for the relevant matter. It does not thus appear legally feasible to make a rule under section 91 providing for the recovery of the cost of damage caused to Govt. property by moter accidents.

Id
5/8/41

A.S.

Sd/-
5/8/

A.L.R.

As in A.S's note amended.

Sd/-
7/8

R.L.A.

Sd/- P.N. Moos.
8/8/